

§ 33.45

provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

§ 33.45 Assistance programs with other nations. [Reserved]

Subpart E—Allocation Actions

§ 33.50 Policy.

(a) It is the policy of the Federal Government that the allocations authority under title I of the Defense Production Act may:

(1) Only be used when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

§ 33.51 General procedures.

When the Department of Transportation plans to execute its allocations authority to address a supply problem within its resource jurisdiction, the Department shall develop a plan that includes the following information:

(a) A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

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(e) A list of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*e.g.*, anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

§ 33.52 Controlling the general distribution of a material in the civilian market.

No allocation action by the Department of Transportation may be used to control the general distribution of a material in the civilian market, unless the Secretary of the Department of Transportation has:

(a) Made a written finding that:

(1) Such material is a scarce and critical material essential to the national defense, and

(2) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship;

(b) Submitted the finding for the President's approval through the Assistant to the President and National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism; and

(c) The President has approved the finding.

§ 33.53 Types of allocation orders.

There are three types of allocation orders available for communicating allocation actions. These are:

(a) Set-aside: An official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders;

(b) Directive: An official action that requires a person to take or refrain